



December 1, 2023

VIA ELECTRONIC MAIL

Pamela Y. Price, Esq.
Alameda County District Attorney
1225 Fallon Street, Suite 900
Oakland, CA 94612

Email: alcoda@acgov.org

Re: Excluding Reporter from Press Conference

Dear District Attorney Price:

With the Northern California Chapter of the Society of Professional Journalists and the Reporters Committee for Freedom of the Press, we write to respond to your office's statement that Emilie Raguso of The Berkeley Scanner was "turned away" from a press conference "for lacking the required media credentials." As your office stated:

The Alameda County District Attorney's office requires all media members to have an official press credential issued by a bonified [sic] national news network, local news affiliate, or a long-standing independent news journal. The standards for being a credentialed journalist are also long-standing and predate the election of District Attorney Pamela Price and the first publication of the blog in question. Among those standards is a newsroom with a management structure and editorial oversight.

As an initial matter, the assertion that any such standards are "long-standing" is questionable, given that, as we understand, Ms. Raguso has previously attended one or more of your office's press conferences without incident. Even if such standards existed on paper, it appears they were rarely if ever enforced, which suggests that their belated invocation is a pretext for targeting Ms. Raguso for her reporting. Similarly, the contention that Ms. Raguso was "uninvited" and "not on the media list" appears to be a self-serving justification, given that she had previously been on the list and regularly received press releases and other notices.

In any event, taking it at face value, your office's position on attendance at press conferences violates the First Amendment because it unconstitutionally discriminates against segments of the press and interferes with editorial discretion.

As settled by the Supreme Court long ago, "The liberty of the press is not confined to newspapers and periodicals.... The press in its historic connotation comprehends every sort of publication which affords a vehicle of information and opinion." *Lovell v. City of Griffin*, 303 U.S.

444, 452 (1938). The First Amendment does not require that a reporter be “associated with the institutionalized press,” because “liberty of the press is the right of the lonely pamphleteer who uses carbon paper or a mimeograph just as much as of the large metropolitan publisher who utilizes the latest photocomposition methods.” *von Bulow ex rel. Auersperg v. von Bulow*, 811 F.2d 136, 145 (2d Cir. 1987) (quoting *Branzburg v. Hayes*, 408 U.S. 665, 705 (1972)). The “intended manner of dissemination may be by newspaper, magazine, book, public or private broadcast medium, handbill or the like,” and “prior experience as a professional journalist” cannot be “the sine qua non” of “present intent to gather for the purpose of dissemination,” which can be shared “by one who is a novice in the field.” *Id.* at 144.

Therefore, for purposes of the First Amendment, the press includes not only “the institutionalized print or broadcast media” but also any person “gathering news for dissemination to the public,” regardless of circulation, audience size, longevity, business model, or corporate or employment status. *Shoen v. Shoen*, 5 F.3d 1289, 1293 (9th Cir. 1993). Under the First Amendment, “it makes no difference whether the intended manner of dissemination [was] by newspaper, magazine, book, public or private broadcast medium, [or] handbill.” *Id.* (cleaned up).

The same is true for digital media. *O’Grady v. Superior Court*, 139 Cal. App. 4th 1423, 1467–68 (2006). There is “no sustainable basis to distinguish” Ms. Raguso “from the reporters, editors, and publishers who provide news to the public through traditional print and broadcast media,” because they all “gather, select, and prepare, for purposes of publication to a mass audience, information about current events of interest and concern to that audience.” *Id.* at 1467.

In any event, there is no credible basis to suggest Ms. Raguso is not a bona fide journalist for an established publication that has a genuine reason to cover your office. Ms. Raguso has been a reporter for approximately 20 years. She founded The Berkeley Scanner to provide robust crime and public safety coverage to Berkeley and the Bay Area. It is difficult to imagine a journalist and publication with a more direct interest in attending your press conferences.

The government has no business assessing whether a given publication has sufficient “editorial oversight” to justify its attendance at press events. The First Amendment prohibits any interference, direct or indirect, with a publication’s “exercise of editorial control and judgment.” *Miami Herald v. Tornillo*, 418 U.S. 241, 258 (1974). The government’s function is to serve the people and defend the Constitution, not to “sit as some kind of journalism review seminar.” *Fletcher v. San Jose Mercury News*, 216 Cal. App. 3d 172, 187 (1989) (cleaned up). Your office is violating the First Amendment by conditioning access to press events on its alleged perception of a publication’s editorial oversight.

Any alleged “security concerns” appear to be pretextual, given that Ms. Raguso has previously attended press conferences without inquiry into any security risks. To the extent your office may have genuine security concerns about access to press conferences by any journalist, it cannot act on them in an ad hoc manner. Instead, it must provide “notice of the factual bases for denial” of access, “an opportunity for the applicant to respond to these, and a final written statement of the reasons for denial” demonstrating that the denial is not “based on arbitrary or less than compelling reasons.” *Sherrill v. Knight*, 569 F.2d 124, 130–31 (D.C. Cir. 1977).

We repeat our demand of yesterday that your office immediately ensure that going forward, all members of the press will receive equal access to press releases and any other general announcements as well as equal opportunity to attend any events generally open to the media.

Thank you for your attention to these matters. Please let me know if you have any questions.

Sincerely,

FIRST AMENDMENT COALITION



David Loy
Legal Director

NORTHERN CALIFORNIA CHAPTER OF
THE SOCIETY OF PROFESSIONAL
JOURNALISTS

REPORTERS COMMITTEE FOR FREEDOM
OF THE PRESS